Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAKASHI YOSHIDA

Appeal No. 2000-2091
Application 08/441,024[1]

HEARD: APRIL 10, 2002

Before RUGGIERO, DIXON and SAADAT, Administrative Patent Judges.

SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1 through 11 and 13 through 16. Claim 12 has been canceled.

We reverse.

BACKGROUND

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[1] Application for patent filed May 15, 1995, which claims the foreign filing priority benefit under 35 U.S.C. § 119 of Japanese Application No. 06-153489, filed July 5, 1994.

Appellant's invention is directed to a client/server system in which clients receive data from a server, process the data and return the data back to the server. The data used by a plurality of clients is supervised exclusively by a server as each client down-loads the data from the server and returns the processed data to the server (specification, page 12). Appellant's invention addresses the problem encountered when the client or the server breaks down. In either instance, the data is automatically transmitted from the client to the server when both the client and the server are operational (specification, pages 13-16). As the data is transmitted to the server, the client sends a message to the server indicating that the data supervising information must be renewed (specification, page 17). Thus, the data generated by the client before transfer to the server, is saved in case of break down and then automatically transferred from the client to the server without any user input (specification, page 18).

The representative independent claim 1 is reproduced as follows:

1. A client/server system comprising:

a server which supervises data;

a plurality of clients for which the server supervises data in a memory unit in the server, each client down-loads data, which is required for a data processing in each client, from the server and returns the data to the server after the data processing is finished, each of said clients comprising:

a data receiving process downloading the data from the server;

a server supervisor that determines whether the server is in correct operation or is down by sending data to the server without receiving an inquiry from said server;

a not-yet-transferred data memory for storing, during operation as a client and when the server supervisor determines that the server is not in operation, not-yet-transferred data to be returned to the server when the server returns to operation;

a not-yet-transferred data writing process, during operation as a client, writing the not-yet-transferred data to the not-yet transferred data memory when the server supervisor determine that the server is not in operation;

a not-yet-transferred data confirming process, during operation as a client, checking whether the not-yet-transferred data to be transferred to the server is present in the not-yet-transferred data memory; and

a not-yet-transferred data transferring process, during operation as a client, transferring the not-yet-transferred data to the server, when the not-yet-transferred data confirming process confirms that the not-yet-transferred data is present in the not-yet-

transferred data memory and the server supervisor confirms that the server is in operation.

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Agrawal et al. (Agrawal)	4,800,488	Jan. 24, 1989
Kobayashi	5,140,689	Aug. 18, 1992

Mary Baker & John Ousterhout (Baker), "Availability in the Sprite Distributed File System," Operating Systems Review, pp. 1-4, April 1991.

William Genosa (Genosa), "Monitoring Performance with isostat and vmstat," System Administer, pp. 1-9, March/April 1994.

Claims 1 through 11 and 13 through 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobayashi in view of Agrawal and Baker.[2]

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobayashi in view of Agrawal, Baker and Genosa.

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[2] Claim 12 was finally rejected under 35 U.S.C. § 103, as being unpatentable over Kobayashi in view of Agrawal (Paper No. 17, mailed April 30, 1999). Appellant canceled claim 12 in an amendment after final rejection (Paper No. 20, filed August 30, 1999). The Examiner approved entry of this amendment upon filing of a Notice of Appeal and an Appeal Brief, as indicated in an advisory action (Paper No. 21, mailed September 3, 1999).

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 25, mailed February 16, 2000) for the Examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 24, filed January 3, 2000) and the reply brief (Paper No. 27, filed April 17, 2000) for Appellant's arguments thereagainst.

OPINION

At the outset, we note that Appellant indicates that claims 1 through 11, 15 and 16 stand or fall together and claims 13 and 14 stand or fall together (brief, page 5). However, Appellant has not, in the arguments section of the brief, provided separate arguments for claims 13 and 14, as required by 37 CFR § 1.192(c)(7) (July 1, 1999). Appellant has merely pointed out the subject matter that claims 13 and 14 cover and relied on the same arguments made with respect to the other claims. Therefore, for the § 103 rejection of claims over Kobayashi, Agrawal and Baker we will consider

Appellant's claims 1 through 11 and 13 through 16 as standing or falling together as a group, and we will treat claim 1 as the representative claim of that group.

With respect to Kobayashi, Appellant argues that the claimed storing, writing, confirming and transferring of not-yet-transferred data are all done on the client side whereas Kobayashi performs such functions on the server side. In particular, Appellant points to the rollback journal file in Kobayashi that receives data from the transaction processing control section, which is located on the server side, only when the data processing system operates as a server (oral hearing and brief, page 8). Appellant concludes that the rollback journal is associated with the server and does not store the data that is to be transferred from a client to a server. Additionally, Appellant argues that the transaction processing control section of Kobayashi operates on the server side whereas the claimed data writing, confirming and transferring processes are internal to and executed by a client (brief, page 9). Similarly, Appellant asserts that Kobayashi merely provides status data for PHASE II processing to the client while the rollback processing restores data in

the server without receiving any processed data from the client (brief, pages 9 and 10). Appellant further points out that the claimed client sends edited data to the server voluntarily, and not in response to a request for services from a server (brief, page 11).

With respect to Agrawal, Appellant argues that the client does not send processed data to the server to update tasks as, similar to Kobayashi, Agrawal performs tasks at the server side (brief, page 10). Regarding Baker, Appellant points out that if a server crashes, clients do not write edited data to their memory and instead, continue where they left off and only provide their file system states to the server when server reboot is detected (brief, page 11).

In response, the Examiner provides no arguments to dispute Appellant's assertion that all the functions claimed to be performed by the client, are done in Kobayashi at the server side. The Examiner merely indicates that the only disputed issue is what constitutes a client or a server. The Examiner argues that the claimed client acts as a server when it becomes a "provider of services" by "providing fault recovery monitoring and data restoration services" (answer,

page 12). Furthermore, the Examiner does not disagree with Appellant's definition of "client" and "server" and indicates that appellant's claimed client becomes a server when it provides services to the server, although the services are not requested by the server.

Appellant responds by relying on the definition of "recovery" and argues that the client of the claimed invention does not recover or restore lost data to the server. Instead, the client proceeds with its data transfer when the server becomes operational (reply brief, page 2). Additionally, Appellant points to the definition of a server as responding to "commands from a client" to conclude that the client of claim 1 is not a server since it does not respond to another computer in response to a request for service (oral hearing and reply brief, page 3).

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). The conclusion that the claimed subject matter is obvious must be supported by evidence, as shown by some objective teaching in the prior art

or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Furthermore, to reach a conclusion of obviousness under § 103, the examiner must also produce factual basis supported by teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration, consistent with the holding in Graham v. John Deere Co., 383 U.S. 1 (1966). Our reviewing court requires this evidence in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984); In re Cofer, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966).

Initially, we note that a review of Kobayashi compels us to agree with Appellant's characterization of the reference that the storing, writing, confirming and transferring of data are performed at the server side, not at the client side. As shown in Figures 1 and 2, Kobayashi provides rollback journal 13 for storing intermediate results of transaction processing

by the transaction processing control section 11 of servers A and B (Col. 4, lines 41-45 & 54-60).

Next, we address the Examiner's contention that Appellant's claimed "client" acts as the server of Kobayashi when the client monitors the failed server and provides services. Appellant provides the definition for "server" as "a computer or program that responds to commands from a client."[3] Therefore, according to the definition, a client requests services from a server and the server provides the requested services. We do not agree with the Examiner that any device that sends data to another, functions as a server. Notwithstanding their common goal of processing data, we find that clients and servers are defined as having distinct roles and capabilities that are not interchangeable. Based on the definitions presented by Appellant, a server is ultimately responsible for storing and managing data as well as making resources available to clients in response to

[3] Microsoft Press Dictionary, 3rd edition, 1997, p. 400. Appellant's definition is consistent with that found in Microsoft Press Dictionary, 2nd edition , 1994, pp. 75, 355, which accompanies this decision.

requests/commands from clients as the clients request services from the server.

Appellant's claim 1 recites a client/server system wherein each client that downloads data from the server, processes the data and returns the processed data back to the server. The claimed server "supervises data in a memory unit in the server" while the client writes the data to a memory only when the client detects server break down. We find that the server does not become a client and remains a server during the period the client writes the processed data and transfers the data back to the server, as soon as the client confirms that the server is in operation. We also note that, without any instructions or requests received from the server, the data storing and transferring functions are performed by the client to merely preserve the processed data during the time the server is down. Thus, based on the established distinctions between "client" and "server," the transaction processing control section of Kobayashi that carries out such functions at the server side, is different from the claimed data storing and transferring which is performed at the client side.

We also note that Agrawal pertains to sharing of computer resources wherein clients solicit availability status information from servers (col. 2, lines 22-26). The client in Agrawal does not store and transfer data and merely transmits a solicit message to the server, as the storage and transferring functions are performed by the server. Baker, on the other hand, uses the file system state replicated on the client workstation and allows the client to continue processing (page 2). In case of the server's reboot, the client transfers to the server the pertinent file system state not the data that was downloaded, processed and transmitted. Based on our analysis above, we find no teaching or suggestion in Agrawal and Baker that would overcome the deficiencies of Kobayashi related to the claimed data downloading, processing, storing and transferring at the client side. Accordingly, we do not sustain the rejection of claims 1 through 11 and 13 through 16 under 35 U.S.C. § 103 over Kobayashi in view of Agrawal and Baker.

We next consider the rejection of claim 3, which depends from claim 1, under 35 U.S.C. § 103 over Kobayashi, Agrawal and Baker in combination with Genosa. The rejection is based

on the Examiner's proposed modification of the data recovery method of Kobayashi, Agrawal and Baker by using the time stamped files of Genosa to provide the most recent version of a file (answer, page 11). Appellant argues that Genosa is concerned with gathering statistics on system performance and contains no teaching or suggestion to overcome the deficiencies in Kobayashi, Agrawal and Baker (brief, page 13 and reply brief, page 6). In response, the Examiner indicates that Genosa should not be evaluated alone since the rejection is based on the combination of the references (answer, page 15).

Our review of Genosa reveals that the reference teaches using monitoring programs for gathering statistics and identifying performance problems in computers. The program of Genosa defines "where the output files will be stored" and uses the "*TIME* variable" in order to "create a timestamp of each record that is appended to the output files" (page 1, ¶ 3). We find no teaching or suggestion in Genosa relating to the claimed limitation of data downloading, processing, storing and transferring at the client side, that would overcome the deficiencies noted above in Kobayashi, Agrawal

and Baker. Therefore, we do not sustain the rejection of claim 3 under 35 U.S.C. § 103 over Kobayashi, Agrawal and Baker in view of Genosa.

CONCLUSION

In view of the foregoing, the decision of the Examiner rejecting claims 1 through 11 and 13 through 16 under 35 U.S.C. § 103 is reversed.

REVERSED

JOSEPH F. RUGGIERO Administrative Patent Judge	)
JOSEPH L. DIXON Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES
MAHSHID D. SAADAT	)

Administrative Patent Judge)

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